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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,122	10/12/2001	John Owens	INVA-FK	2411

24024 7590 08/10/2004

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EXAMINER

BOTTORFF, CHRISTOPHER

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,122

Applicant(s)

OWENS, JOHN

Examiner

Christopher Bottorff

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9, 15-20 and 31-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 67 and 68 is/are ⁸⁴⁺⁸⁵ allowed.
- 6) ☒ Claim(s) 9, 15-20, 31-55, 58, 60, 62-66, 76-78 and 83 is/are rejected.
- 7) ☒ Claim(s) 56, 57, 59, 61, 69-75 and 79-83 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 May 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

The amendment filed May 20, 2004 has been entered. Claims 1-8, 10-14, and 21-30 are canceled. Claims 62-85 are added. Claims 9, 15-20, and 31-85 are pending.

Drawings

The drawings were received on May 20, 2004. These drawings are objected to by the examiner for including informally drawn circles around various components such as the seat, handle, and back rest.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 80, 81, 82 as it depends from claims 80 and 81, and claim 83 as it depends from claims 80 and 81 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 80 recites the limitation "the cross bars" in lines 15 and 20. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9, 32-37, 42, and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Alulyan US 5,904,168.

Alulyan discloses an ambulatory device comprising two side frames 35 that each have a first leg 41, 55 and a second leg 39, 55 with a cross bar/member 43 connecting the first leg and second leg at their mid-sections. See Figure 1. The first legs 41, 55 are connected by a brace 49. See Figure 1. A seat 33 with a substantially flat sitting area has first and second sections. See Figure 1. The first section is pivotally connected to the first legs of the frames. The seat 33 has a first position with a substantially horizontal orientation and a second position with a substantially vertical orientation. See Figures 1 and 2. Two downwardly curving support brackets 81 extend outwardly from the seat 33 and secure the seat 33 to the frames when the seat is in the first position by engaging the corresponding cross bar/member 43. See Figure 1. The support brackets 81 comprise a top surface, which is attached to rods 79, and two flanges extending substantially along the top surface, whereby the flanges form downwardly extending side walls that rest along the sides of cross bar/member 43 when the seat 33 is in the first position. The support brackets 81 provide support to the device when the seat 33 is in the first position, including distributing lateral force along the brackets and across the seat 33.

The side frames 35 include a substantially u-shaped horizontal support member 37 connecting the legs 55. See Figure 1. The support brackets 81 secure the seat 33

to the cross-members 43 and each of the first and second legs 55 includes a length adjustment means (height adjustment mechanism). See Figure 1 and column 2, line 50. A locking mechanism 63, 65 is located on each of the side frames 35 and maintains the side frames 35 spaced apart and releasable, such that the side frames 35 can pivot inwardly and approximately 180 degrees when the locking mechanism is released. See Figures 3 and 4 and column 3, lines 45-52. Also, the seat 33 in the second position is at least partially in front of the first legs 55. See Figure 2.

Although Alulyan identifies the first leg elements 41, 55 as being in the rear and the second leg elements 39, 55 as being in the front, the front/rear orientation is merely a reversal of the terminology used in the present claims. The actual leg structure disclosed by applicant as being in the front or rear (i.e. the leg position relative to the brace connecting the front leg of each frame) corresponds to the structure disclosed by Alulyan as being in the rear or front respectively. Merely reversing the terminology in the claims does not represent a patentable distinction. Since the front/rear orientation will change depending upon the operator's perspective when sitting or using the device for walking and for consistency with the terminology of the claims, for the remainder of the office action first leg elements 41, 55 are identified as the front legs and second leg elements 39, 55 are identified as the rear legs.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Hara et al. US 6,494,469.

Alulyan does not disclose a wheel connected to each of the front and back legs, brakes that engage the wheels on the back legs, hand brake actuators positioned on the side frames, and a back rest connecting the side frames.

However, Hara et al. teaches that providing an ambulatory device with wheels 2 and 4 respectively connected to each of the front and back legs, brakes 120 that engage the wheels on the back legs, hand brake actuators 79 positioned on the side frames, and a back rest 8 connecting the side frames was old and well known in the art at the time the invention was made. See Figures 1-3 and column 13, lines 6-8.

From the teachings of Hara et al., connecting a wheel to each of the front and back legs of Alulyan, providing the device of Alulyan with brakes that engage the wheels on the back legs and hand brake actuators positioned on the side frames, and connecting the side frames of Alulyan with a back rest would have been obvious to one of ordinary skill in the art at the time the invention was made.

Connecting a wheel to each of the front and back legs of Alulyan would allow the device to be moved with less effort by an operator. Providing the device of Alulyan with brakes and hand brake actuators would give the operator control over the movement of the device. Also, connecting the side frames of Alulyan with a back rest would provide an operator with improved comfort and support when sitting on the seat.

Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Gajewski et al. US 5,579,793.

Alulyan does not disclose at least one padded region located on at least one of the horizontal supports. However, Gajewski et al. teaches that providing a padded region 20 on horizontal supports of an ambulatory device was old and well known in the art at the time the invention was made. See column 2, line 66, through column 3, line 2. From the teachings of Gajewski et al., providing at least one padded region on at least one of the horizontal supports of Alulyan would have been obvious to one of ordinary skill in the art at the time the invention was made. This would assist the operator in manipulating the ambulatory device.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Battiston US 6,371,142.

Although brace 49 of Alulyan is provided forward of the front legs, Alulyan does not disclose that the brace is curved outwardly away from the front legs. However, Battiston teaches that providing a forwardly disposed brace 28 such that it is curved outwardly away from the front legs was old and well known in the art at the time the invention was made. See Figures 1 and 4. From the teachings of Battiston, providing the brace of Alulyan such that it is curved outwardly away from the front legs would have been obvious to one of ordinary skill in the art at the time the invention was made.

This would provide the seat with adequate space behind the brace to move into the second, substantially vertical, position.

Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Wohlgemuth et al. US 6,338,493.

Alulyan does not disclose that the support brackets are integrally molded with the seat. However, Wohlgemuth et al. teaches that forming support brackets 91, 92 integral with a seat 90 was old and well known in the art at the time the invention was made. See Figures 2 and 4. From the teachings of Wohlgemuth et al., forming the support brackets of Alulyan integral with the seat would have been obvious to one of ordinary skill in the art at the time the invention was made. This would reduce the number components and steps required in assembling the device. Also, forming the seat brackets integral with the seat represents an obvious design choice.

In regard to the claimed molding process, the examiner takes official notice that the process of molding was old and well known in the art at the time the invention was made. Forming the seat and seat bracket structure through molding would have been obvious to one of ordinary skill in the art at the time the invention was made in order to use a process that is familiar to manufacturing personnel.

Claims 15, 20, 44, 46-49, 50, 51, 53-55, 58, 62-66, 76-78, and 83 as it depends from 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Brennan US 4,733,910.

Alulyan does not disclose that the seat includes an undersurface comprising intersecting walls forming walled recesses with open sides. However, Brennan teaches that the practice of providing a seat 2 with walled recesses formed by intersecting walls 8 disposed on the underside of the seat was old and well known in the art at the time the invention was made. See Figure 3 and column 2, lines 35-37 and 45-48.

The intersecting walls of Brennan are formed integrally with the seat undersurface and extend downward from the seat undersurface defining a plurality of downward openings. The walls include a first continuous wall extending under the seat from one side to another side, and second and third continuous walls extending under the seat from one side to another side substantially parallel to the first continuous wall. A first plurality of walls extends under the seat diagonal to the first second and third walls extending from one side of the seat to another side. A second plurality of walls also extends under the seat diagonal to the first, second, and third walls extending from one side of the seat to another side, and is substantially perpendicular to the first plurality of walls so that some of the downward openings are substantially rectangular when viewed from below. The walls in the first plurality of walls are substantially parallel to each other and the walls in the second plurality of walls are substantially parallel to each other.

From the teachings of Brennan, providing the seat of Alulyan with walled recesses formed by intersecting walls disposed on the underside of the seat would have been obvious to one of ordinary skill in the art at the time the invention was made. This would strengthen the seat. Also, since the support brackets of Alulyan are disposed at

the side of the seat, the first second and third continuous walls extending under the seat would extend from one support bracket to the other support bracket when this obvious modification is made to the seat of Alulyan.

Claims 16, 17, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Brennan US 4,733,910 as applied to claim 15 above, and further in view of Hara et al. US 6,494,469.

Alulyan does not disclose a wheel connected to each of the front and back legs, brakes that engage the wheels on the back legs, hand brake actuators positioned on the side frames, and a back rest connecting the side frames.

However, Hara et al. teaches that providing an ambulatory device with wheels 2 and 4 respectively connected to each of the front and back legs, brakes 120 that engage the wheels on the back legs, hand brake actuators 79 positioned on the side frames, and a back rest 8 connecting the side frames was old and well known in the art at the time the invention was made. See Figures 1-3 and column 13, lines 6-8.

From the teachings of Hara et al., connecting a wheel to each of the front and back legs of Alulyan, providing the device of Alulyan with brakes that engage the wheels on the back legs and hand brake actuators positioned on the side frames, and connecting the side frames of Alulyan with a back rest would have been obvious to one of ordinary skill in the art at the time the invention was made.

Connecting a wheel to each of the back legs of Alulyan would allow the device to be moved with less effort by an operator. Providing the device of Alulyan with brakes

and hand brake actuators would give the operator control over the movement of the device. Also, connecting the side frames of Alulyan with a back rest would provide an operator with improved comfort and support when sitting on the seat.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Brennan US 4,733,910 as applied to claim 15 above, and further in view of Gajewski et al. US 5,579,793.

Alulyan does not disclose at least one padded region located on at least one of the side frames. However, Gajewski et al. teaches that providing a padded region 20 on side frames of an ambulatory device was old and well known in the art at the time the invention was made. See column 2, line 66, through column 3, line 2. From the teachings of Gajewski et al., providing at least one padded region on at least one of the side frames of Alulyan would have been obvious to one of ordinary skill in the art at the time the invention was made. This would assist the operator in manipulating the ambulatory device.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Brennan US 4,733,910 as applied to claim 15 above, and further in view of Battiston US 6,371,142.

Although brace 49 of Alulyan is provided forward of the front legs, Alulyan does not disclose that the brace is curved outwardly away from the front legs. However, Battiston teaches that providing a forwardly disposed brace 28 such that it is curved

outwardly away from the front legs was old and well known in the art at the time the invention was made. See Figures 1 and 4. From the teachings of Battiston, providing the brace of Alulyan such that it is curved outwardly away from the front legs would have been obvious to one of ordinary skill in the art at the time the invention was made. This would provide the seat with adequate space behind the brace to move into the second, substantially vertical, position.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alulyan US 5,904,168 in view of Brennan US 4,733,910 as applied to claim 15 above, and further in view of Keuning US 5,887,887.

Alulyan does not disclose that the seat includes a handle. However, Keuning teaches that the practice of providing a pivoting seat with a handle 19 was old and well known in the art at the time the invention was made. See Figure 1 and column 3, lines 2-5. From the teachings of Keuning, providing the seat of Alulyan with a handle would have been obvious to one of ordinary skill in the art at the time the invention was made. This would allow an operator to easily grip the seat to move the seat.

Allowable Subject Matter

Claims 67 and 68^{and 84 and 85} are allowed. Claims 56, 57, 59, 61, 69-75, 79, 82 as it depends from claims 62, 67, 69, 76, and 79, 83 as it depends from claims 69 and 79, 84, and 85 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base

claim and any intervening claims. Claims 80, 81, 82 as it depends from claims 80 and 81, and 83 as it depends from claims 80 and 81 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to the previous rejection of the claims have been considered but are moot in view of the new ground(s) of rejection.

In the argument filed September 4, 2003, Applicant asserted that providing lateral support through the brackets 81 of Alulyan is "highly unlikely" and distributing the force across the seat is "even more highly unlikely." However, this claimed ability of the brackets to provide support relates to a functional characteristic of the present invention. It is well settled that claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). Thus the ability of the support brackets of the present invention to provide lateral support or distribute lateral force across the seat does not distinguish the claimed invention over the prior art.

Moreover, Applicant's assertions are unsubstantiated speculation. The disclosure of Alulyan does not suggest that the ability of the brackets to rotate would limit lateral support. Also, the brackets 81 of Aluyan, when attached to rods 79 and seat 33, would provide lateral support to the side frames, and this structure would have sufficient rigidity to distribute such lateral force across the seat. Although brackets 81 turn, they are firmly engaged with braces 43 when the seat is in the lowered position.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Luo US 5,772,234 and Hallgrimsson et al. US 6,659,478 disclose ambulatory devices. Schier teaches a seat with an inwardly curved contour at the forward and rear edges. Allen discloses a seat with an undersurface comprising a plurality of walled recesses.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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